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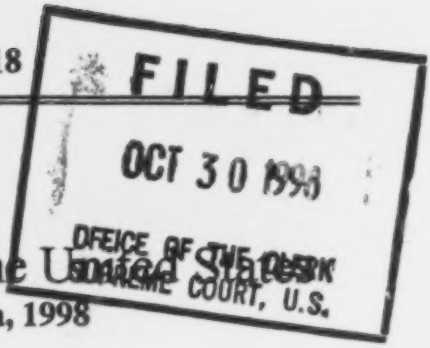

In the

Supreme Court of the United States

October Term, 1998

—

Roger Lee Heath
Petitioner,

v.

Baxter International, Gomer Winston Walters,
Nadeen Berger, et. al.
Respondents

--

On Petition For a Writ of Certiorari To The United States Court of Appeals for the Seventh Circuit

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SUPPLIMENTAL APPENDIX

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APPENDIX

United States District Court
For The Northern District of Illinois
Chicago, Illinois 60604

ORDER
March 18, 1997

Roger L. Heath, *Plaintiff*

v.

Gomer W. Walters, Baxter International, et. al., *Defendants*

Case No. 94 C 7812
George W. Lindberg, Judge

The court, sua sponte, reconsiders its order of March 11, 1997. The court is of the opinion that plaintiff's misstatement of his income on the petition to proceed in forma pauperis was in fact a fraud on the court. The court therefore exercises its discretion and dismisses this action with prejudice. 28 USC Sec. 1915(d) (court "may dismiss the case if the allegation of poverty is untrue"). Additional explanation of the reasons for this action is contained in a Memorandum and order filed this day under seal in order to protect attorney-client privilege. The portion of the March 11, 1997, order relieving all appointed counsel of their appointments is unaffected by this order.

MEMORANDUM AND ORDER

On March 11, 1997, the court conducted an in camera proceeding on the record at the request of Mr. Marvin miller, appointed counsel for plaintiff. Mr. Miller advised the court that upon analysis of plaintiff's representations under oath in his application to proceed in forma pauperis, it became apparent that for the fiscal year 1994, which would be the relevant year of reference for the application, the plaintiff had a total income of $20,740. In fact, for the immediate previous two years he had incomes of over $38,000 and $20,000 respectfully. Rather than report the $20,740 as required by question 1(a) of the application, he reported what he represented to be the average of the most recent years' 'income to wit': "Average Income (NET of TAX) = $2016.17". At the hearing plaintiff presented the court with a different figure for the average income referred to in his application. He admitted that the correct figure was $12,800 not $2016.17 a difference of over $10,000.

The court concluded at the end of the hearing that plaintiff had never been entitled to proceed in forma pauperis and vacated the order granting his application to proceed. Because he was not being permitted to proceed in forma pauperis, plaintiff was not entitled to appointed counsel. 28 USC Sec 1915(a),(d). Therefore, Mr. Miller's motion to withdraw as counsel was granted and plaintiff's other appointed attorney was also relieved of appointment.

The court has given substantially more consideration to the plaintiff's conduct in this matter. The court now finds plaintiff intentionally manipulated the amounts of his actual

income to induce the court to grant him free counsel. He perpitrated a fraud on the court. There was a continuing fraud, until brought to the court's attention March 11, 1997. Until that time, the court was unaware of the elaborate scheme that the plaintiff engaged in to defraud the court, and at that hearing plaintiff continued his deception by attempting to explain awaythe false statements he had made in the affidavit in support of his application to proceed forma pauperis. The only sanction appropriate to a fraud of this magnitude is dismissal of the action wiuth prejudice. See 28 USC Sec 1915(d); Romesburg v Trickey, 908 F2d 258, 259 (8th Cir 1990) ("district court has the discretion to dismiss a case with prejudice where a plaintiff has in bad faith filed a false affidavit of poverty).

ORDERED: The court, sua sponte, dismisses this action with prejudice.

Date: March 18, 1997

/s George W. Lindberg
U.S. District Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

CASE NUMBER: 97 - 1844

APPEAL
OF *PRO SE* APPELLANT ROGER HEATH

Roger Lee Heath	)	
PRO SE Plaintiff,	)	NO. 94 C 7812
	)	
v.	)	JUDGE LINDBERG
	)	
Baxter, Walters, Townsen., .	)	Magistrate Judge: Lefkow
Et.al. Defendants.	)	May 19, 1997

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Exhibit References - Exhibits referenced in this Appeal are primarily those of two docketed filings in the District Court:

1. 4/4/97 - NOTICE of MOTION by pro se appellant Roger Lee Heath and MOTION for reconsideration of the order to dismissal. (exhibits 1-10) (Docket #244 - 4/22/97)

2. 4/4/97 - MEMORANDUM (Incomplete Amended Complaint) by pro se appellant Roger Lee Heath in support of motion for reconsideration of the order for dismissal and incomplete Amended Complaint. (exhibits 1-31 and A-Z) (Docket #246 - 4/22/97)

Note: Above documents were missing and marked on the Docket dated April 22, 1997 as 'N/A' (Not available in the District Court File) After being informed of this, the Appellant filed a motion for supplementing the record with copies and for these to be forwarded to the Court of Appeals. This motion was granted on a Minute Order dated 5/6/97. Appellant has received a copy of a letter from Ms. Ruby McGhee dated 5/9/97 that these documents have been forwarded to the Clerk of the Court of Appeals for the Seventh Circuit.

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Appellant, Roger Lee Heath, appearing Pro Se, and who is not an attorney, respectfully submits the following Appeal to the best of his understanding of the required rules and procedures.

JURISDICTION:

This statement is presented under U.S. Statute Title 28 USC 1338, and others cited within the case (see MOTION and MEMORANDUM dated 4/4/97, Docket #244-246, 4/22/97) , that gives the District Court authority to hear the case. This statement is presented which gives the Circuit Court of Appeals jurisdiction to hear this appeal. (28 USC 1291, F.R.C.P., F.R.A.P.)

Also, Rule 61 of the Federal Rules of Civil Procedure should also be heeded by Appellate Courts. (*De Santa v.*

Nehi Corp., (1948, CA2 NY) 171 F2d 696, *Gillis v. Keystone Mut. Casualty Co.* (1949, CA6 Ky) 172 F2d 826, *Keaton v. Atchison T. & S.F.R. Co.*, (1963, CA7, Ill.) 321 F2d 317) Rule 61 is applicable at the appellate level. (*Grey v. Shell Oil Co.* (1972, CA9, Cal) 469 F2d 742) Under such context all legal issues in Appellant's case require review.

This Appeal is from a final order in the District Court dated March 18, 1997, is filed on a timely basis, with docketing fee paid, and a Notice of Appeal filed 4/8/97 and Appeal docketed 4/10/97.

STATEMENT OF ISSUES:

Appellant, Roger Lee Heath, has invented extremely valuable life saving technology. In 1983, Prudential Bache Securities, a nationally recognized securities firm, valued Appellant's technology "conservatively" at $66.5 million dollars. Appellant's inventions have been credited as saving thousands of lives worldwide and Appellant has been nominated for the nation's highest prize awarded inventors, The Lemelson MIT Prize, by the Chairman of the American Heart Association, AED Committee, Dr. Richard Kerber, and other prominent medical experts . The American Heart Association has launched a national campaign to make use of Appellant's inventions as common as fire-extinguishers and fax machines beginning with first responders. This has increased the value of Appellant's inventions substantially and will continue to do so in coming years.

Present estimated sales infringing Appellant's patents, including some popular surgical applications, are estimated at $688,000,000.

3. This Appeal focuses primarily on three competitors (defendants) of Appellant;

(1) Baxter International
(herein referred to as 'Baxter')
(2) Medical Research Labs
(herein referred to as 'MRL')
(3) Zenex Corporation
(herein referred to as 'Zenkich or Zenex')

;and those who have aided, in one way or another, each or all these competitors in anticompetitive activities including the criminal demise of the Appellant and the company he founded, R2 Corporation. (the successor which is defendant, R2 Medical Systems, Inc. who is referred to herein as 'R2') The events surrounding the Defendants and the Appellant are highly detailed in a Sworn Statement and Chronology assembled originally for attorney Eugene Friedman appointed by the Court.

As the Court will see in these disclosures, the Appellant's former patent counsel and defendant, Gomer W. Walters, and his law associates or friends, each play key roles in the systematic, prolonged, and pervasive deception of both Appellant and the investors in the company he founded, R2, chiefly on behalf of the above competitors or their associates.

The events outline at least three parallel Conspiracies against the Appellant, each representing actions on behalf of an above mentioned competitor:

(1) - <u>On Behalf of Zenex</u> - In very short summary, in this

conspiracy Appellant was referred by Zenex's own attorneys, defendant Dalton and others, to Gomer Walters. Walters then filed a lawsuit for Appellant against Zenex, only to then intentionally loose it. Afterwards Gomer Walters converted Appellant's patent rights to both himself and Zenex and then joined in practice with Zenex's own attorneys as rewards or payoffs.

(2) - On Behalf of Baxter - In very short summary, this conspiracy involves, in Gomer Walter's own words, a conspiracy or 'pathway to follow' given to him by Baxter Chairman, defendant William Graham. It should also be noted that Gomer Walters is a former Yale football teammate of defendant Vernon Loucks, Jr, CEO of Baxter,but these were never presented to Appellant as potential conflicts. In executing this conspiracy, Baxter and Loucks close associates (defendants Phildius, Kenyon, Scott, and Townsen (or Ventana Growth Fund)), and Graham's own former secretary, defendant Diana Hillier (placed into Appellant's company by Gomer Walters himself.) participate in blackmail of Appellant for sexual harassment, using a blackmail letter drafted, at least in part, by defendant, Nadeen Berger. This is after Appellant refused to sell his company to defendant NDM which later became Baxter/NDM and who supplies Baxter. After the blackmail of Appellant, Baxter/NDM then infringed Appellant's patents and proceeded to award defendant Gomer Walters, through its associates, a payoff or royalties potentially worth over $2,500,000. representing conversion and further infringement of the Appellant's patent rights.

(2) - On Behalf of MRL - In very short summary, this conspiracy involves certain investors and advisors of defendant/competitor MRL; Dr. Gary Anderson, Ray Kraftson, and Safeguard Scientifics, who joined the Baxter associates mentioned above in demise of Appellant. This is after these MRL associates, along with other investors, learned of a new defibrillator/resuscitator design that might obsolete MRL products. Then MRL was rewarded or paid off by acquiring distribution of Appellant's technology and an illegally acquired agreement to pursue the highly secret defibrillator/resuscitator project infringing Appellant's patents.

The conspiracies above involve many complex legal issues,. with other collaborating Defendants. After Appellant's criminal demise, William Barrows and Hopkins & Sutter then aided in the further criminal destruction and infringement of the Appellant's rights by not properly litigating on behalf of the Appellant. Barrows also defrauded Appellant about many legal issues, thus participating in said conspiracies, to further 'set the stage' for payoff of his attorney friend, Gomer Walters, who then signed an agreement, or conversion, or final payoff for $2,500,000 plus of what should be Appellant's patent royalties, when he was owed only a very small amount of fees, and for his pervasive and prolonged participation in these events since the beginning.

Afterwards, the competitors listed above even eventually hired away the technical engineering expertise assembled by Appellant, dividing it among themselves in the concerted, well planned and executed intentional destruction

of Appellant and his company as a viable competitor within medical markets, and even appointed to the Appellant's company's board former Baxter executives and MRL associates.

Appellant after being misled and coerced, with this criminal undue influence and fraud, into a settlement, then disclosed part of the issues to some shareholders and authorities at which time this coerced settlement was breached ultimately throwing Appellant into an even more severe prolonged state of mental strife, poverty, loss of his home, and virtually everything meaningful to him, and finally destroying any reputation or normal life to which he is deserved. Appellant was blackballed right out of the medical industry after inventing products ultimately responsible for saving thousands of lives on a national scale.

Appellant has invented medical lifesaving products that have now accounted for over ONE HALF BILLION DOLLARS in sales. Appellant has received NO ROYALTIES AT ALL on his more than 30 patents. Appellant begs the Court to understand that this could only have occurred due to a systematic and pervasive CONSPIRACY to DEFRAUD and DECEIVE, over a long period, by Appellant's own former legal counsel, and Defendants, with the intent to participate in the infringement of Appellant's own inventions or patent rights, and further, to conspire with competitors, especially Defendants of Baxter, in the deliberate destruction of Appellant's life, with the intent restrain trade and competition, and with the intent to permanently eliminate any just pathway of recourse,

legal and otherwise, by Appellant against Defendants. This undue influence, fraud, and moral coercion to extort from Appellant his extremely valuable patents, valuable equity in the company he founded, disable any competition from Appellant. and infringe his technology, is criminal, and also represents serious Patent, Federal Antitrust, Federal Securities Law, and Federal RICO Racketeering violations.

Classically, as a whole conspiracy, involving multiple competitors conspiring together 'horizontally' in collaboration with others to cripple or disable a single potential competitor to limit competition, restrain trade, extort and infringe his patent rights, is also a violation of the Sherman Act and when utilizing criminal actions or methods upon more than one related entity is a violation of the Federal RICO racketeering laws, and when done with an intent to manipulate equity or securities is a violation of Federal Securities Laws. Defendants in this case intended from the beginning to violate these Federal laws through application of the other means. Certain other named defendants aided and abetted these competitors in these violations..

Heart Disease is the nation's number one killer. Actions by the defendants have disabled not only Appellant's abilities to openly and fairly compete, further develop, and benefit from his life saving patents, but also have prohibited Appellant from saving additional lives on a national scale through the proven and expanded application of his unique expertise. Appellant's designs have never been completed.

This alone is a serious ongoing crime against the Appellant and the United States.

Exhibits for above statements are available in the 4/4/97 - MEMORANDUM (Incomplete Amended Complaint) by pro se appellant Roger Heath (exhibits 1-31 and A-Z) (Docket #246 - 4/22/97)

Other issues identified concerning this complex case are in the record from three basic parties, The District Court, Eugene Friedman (an attorney appointed by the District Court), and Roger Lee Heath, the Appellant.

On March 19,1996 The District Court found the following issues or claims could be identified within the Appellant's Original Complaint and subsequent responses;

> "fraud by Appellant's former lawyers, conversion of patents by Appellant's former patent attorney, patent infringement, contributory infringement, unfair competition, defamation, blackmail, sexual harassment, extortion, misrepresentation, legal malpractice, collusion, payoffs, and that William Barrows and Hopkins & Sutter failed to rectify Appellant's demise." (see MINUTE ORDER 3/19/96 - Docket #217 - 4/22/97)

On October 25, 1996 additional or same issues concerning this case were identified by Eugene Friedman, an attorney appointed by the District Court;

> "... Friedman reached two important conclusion

concerning the further handling of this case. First, the action concerns various bases only peripherally connected to patent law. These bases specifically include legal malpractice, breach of fiduciary responsibilities, breach of contract, antitrust law, securities violations, fraud, conversion, and possibly others." (see MEMORANDUM 4/4/97 – Exhibit 7 - Docket #246 - 4/22/97)

On April 4, 1997 the Appellant filed in the District Court a Motion for Reconsideration of the order to dismissal. Contained in this filing is a Memorandum or Incomplete Amended Complaint with attachments which lists many specific statutes and related issues that are the issues in his case. (See 4/4/97 - MEMORANDUM (Incomplete Amended Complaint) by pro se appellant Roger Lee Heath in support of motion for reconsideration of the order for dismissal and Incomplete Amended Complaint. (exhibits 1-31 and A-Z) (Docket #246 - 4/22/97))

Appellant is PRO SE, not an attorney, and without legal background in most of these issues. It is important to understand that Appellant's first Complaint was filed in haste, with broad claims, and numerous defendants, after Appellant had considerable and unsuccessful attempts to retain counsel, and after Appellant learned he had been deliberately misled, by his own counsel, who are defendants in this case, regarding many important legal issues surrounding his case. After filing his first Complaint, Appellant has been in the process of learning the Court's rules as he struggles along attempting, to the best of his

abilities, to understand the rules, forms, accounting principles, and the complex legal issues surrounding his case.

The Appellant's case was dismissed, with prejudice, on March 18, 1997 case due to a dispute over accounting terms in which the District Court concluded that Appellant defrauded the District Court on his application for counsel on a Forma Pauperis form. The Order did not address any of the above serious legal issues at all or other reasons for appointment, under Rule 3.82, of counsel originally requested by Appellant in his motion. (see Appendix) (also see 3/19/96 MINUTE ORDER - Docket #217 4/22/97)

STATEMENT OF THE CASE:

The nature of the case is very complex and substantially disclosed, with types of action and statutes involved, in the Record in the Motion and Memorandum (or Incomplete Amended Complaint) filed 4/4/97 by the Appellant. (see 4/4/97 - Motion and Memorandum - Docket #244-246 from Docket dated April 22, 1997)

STATEMENT OF FACTS:

For a detailed disclosure of the facts and events surrounding Appellant see Appellant's Chronology of Events (with 'Preponderance of Evidence' notes) disclosed within the case. (see 4/4/97 - Memorandum - Docket #244-246 4/22/97)

After filing of the first Complaint of this case in December 1994, the District Court concerned itself primarily with responses by the Appellant and the defendants for approximately one year. (see Docket #1-217)

On 3/19/96 (see Docket #217) the District Court denied all motions to dismiss except defendant Baxter and ordered Appellant to produce an Amended Complaint. In addition the Court granted a motion of Appellant for appointment of counsel under Rule 3.82 listing many reasons for appointment of counsel from Rule 3.82, and a Forma Pauperis application clearly 'Net of Tax' or listing after tax income of Appellant. Attached to the Forma Pauperis form and motion was a sworn statement from the Appellant's CPA clearly stating the period for which the after tax income was derived. The District Court identified many complex serious legal issues. (see 'Issues' above) Defendants were not required by the Court to respond to any of these serious issues. No oral arguments were given upon these issues.

The Court spent the better part of a year attempting to appoint counsel. Most attempts were frustrating and unsuccessful because most attorneys, and many law firms in Chicago, already represent defendant Baxter, a conflict. Finally the Court appointed attorney Eugene Friedman as counsel to Appellant. In a motion to the Court, attorney Friedman identified many complex legal issues and indicates he alone cannot represent Appellant. (see 'Issues' above) The Court responded, reaffirming complexity of the case (Rule 3.82) and that a 'multidisciplinary approach' to the case is warranted, and that two additional attorneys should be appointed to Appellant. (see Docket# 217-229)

The Court again, with difficulty, attempted to appoint counsel, and again mostly unsuccessful due to defendant Baxter retaining most of the firms in Chicago that are approached by the Court. Finally a Mr. Marvin Miller is appointed by the Court. Mr. Miller and some of his associates began inquiry into Appellant's case also finding many complex legal issues. Mr. Miller requested an incamera proceeding with the Court and Appellant discovered that Mr. Miller has a serious conflict of interest. Mr. Miller has a client that is in the same Court and before the same Judge, which is a business partner with two of the defendants, including the company 'R2' founded by Appellant who is directly infringing Appellant's patent rights.

At the beginning of the incamera proceeding the conflict of Mr. Miller was affirmed and he and his associates present were dismissed. Yet, Mr. Miller, and his associates, proceeded, at the request of the Court, to disclose randomly selected documents to the Court regarding plaintiff's financial history. The Appellant then produced a sworn statement or letter from his accountant demonstrating his average after tax income for the years 1990 to 1995 is $9476. per year. The attorney, Friedman, reaffirmed a list of many of the complex issues in Appellant's case. The Court, after conferring with it's counsel privately, returned an opinion that the Appellant had NOT defrauded the Court. However, since the Appellant had some improvement in his condition financially, remaining attorney Friedman was dismissed. The Appellant argued that counsel had already been appointed based on 'complexity' (Rule 3.82) and that it should be allowed to continue. The Court indicated that Appellant

could file an Amended Complaint, as ordered, on his own pro se and that counsel may possibly be reappointed based on complexity afterwards. (see Docket #229-233)

With no change in the prior facts or materials brought before the Court, and without a full review of the financial records of the Appellant, and without addressing the other serious legal issues already identified by the Court, the Court then handed down an order to dismissal with a second opinion that the Appellant did commit fraud. A motion for reconsideration by Appellant was also denied and the case was brought to the Court of Appeals. (see Docket #233-350)

SUMMARY OF ARGUMENT:

Appellant did not defraud the Court and did not have an elaborate scheme to do so regarding his status as Forma Pauperis. On the form or application for such he used a reasonable and generally accepted accounting term from a practicing CPA who had knowledge of his financial records. 'Net of Tax' or 'Net Income After Tax' is of having to make an assumption based on a limited description of what is required on the form. The accounting term used is common and readily understood by everyone. The number presented on the form is accurate based on the best records available to Appellant. No fraud occurred.

The District Court's order was based upon inaccurate presentations by an attorney already dismissed and who was, previous to that, established, by the Court, to have a conflict of interest, who appears to have thus prejudiced Appellant's case. The Record on the Order to Dismissal is inaccurate on

disclosing this conflict issue and the reason for this attorney's dismissal.

The District Court has produced contradicting opinions regarding whether the Appellant committed fraud in this regard that are on file in the Record even though the prior facts available to the Court in both instances did not change. The order was also rendered without a fair, thorough, and reasonable review of all of the Appellant's financial records that will demonstrate no fraud occurred.

The error by Appellant, if any, for which the case was dismissed does not affect the very serious subject matters, or principle issues, within the Appellant's case. The Court cannot disregard these issues in the case because of a minor error, if any, the Appellant may have made because this is inconsistent with substantial justice. (F.R.C.P. Rule 61) Appellant's case must be allowed to continue.

Inappropriate venue may have unfairly harmed Appellant's case.

ARGUMENT:

The following excerpts are reviewed from Appellant's motion of April 4, 1997 because of their very direct relevance to this Appeal. Exhibits referred to are those within that motion. (see 4/4/97, MOTION of pro se plaintiff Roger Heath, Docket #244 4/22/97) The following was presented to the District Court:

On March 18, 1997 the Court granted a Motion to Dismiss based upon observing very limited documents regarding Appellant's financial records and concluding alleged fraud had occurred by Appellant.

Appellant is PRO SE and not a lawyer or even an accountant. Thus, Appellant does not have a clear or professional understanding of all the Federal Rules of Civil Procedure or all accounting procedures and practices of the Court. Since March 18th, Appellant has met with his accountant to determine the accuracy of his documents or filings with the Court.

1. Appellant has had no fair and reasonable opportunity at all to produce complete financial records to demonstrate the validity of his filings. Only partial financial data were disclosed to the Court by an attorney who was dismissed due to conflict.

2. At the beginning of the March 11th in camera proceedings Appellant first instructed Mr. Miller, his associates, not to speak due to a potential conflict of interest which might prejudice Appellant's case. This potential conflict was accepted by the Court. Mr. Miller and his associates were dismissed.

3. Mr. Miller, with an established conflict of interest, then proceeded to provide randomly assembled financial data regarding the Appellant to the Court. Mr. Miller's apparent errors in his analysis of Appellant's financial condition forms an unqualified opinion. (see exhibit 1 and 2) Thus any statements provided to the Court by Mr. Miller should be stricken and discarded because of the conflict of interest

accepted by the Court. Mr. Miller's comments cannot be validly used as justification for any Motion to Dismiss particularly because they are in error and with conflict. The Court's 'additional consideration' of Mr. Miller's inaccurate information should not be used as a basis for any ruling. (see exhibit 2)

4. Appellant did not 'intentionally manipulate' any amounts to wrongfully induce the Court to grant free counsel. Mr. Miller did assemble his inaccurate presentation by lifting from context Appellant's financial data. Thus, it is Appellant's opinion that Appellant did not commit fraud at all.

5. Appellant filed his application for counsel under Rule 3.82, citing five reasons for appointment of counsel; all valid. The Court granted that motion:

a. Appellant was forma pauperis at the time and his application was valid. (see exhibit 2)

b. The four other reasons for appointment of counsel remain valid (see exhibit 7) on the basis of complexity of issues and the inabilities of the Appellant to have appropriate diverse expertise to address these issues. The Court affirming the complexity of the issues then moved to appoint three attorneys for a 'multidisciplinary approach' needed to address all of these issues. This approach never materialized for Appellant despite the Court's recognition of complexity

as addressed in Rule 3.82 and Appellant's original motion for appointment of counsel.

6. There is no fraud perpetuated on the Court by Appellant.

7. In addition, an earlier filing of an application for Forma Pauperis by the Appellant, which was denied, is consistent in attempting to disclose financial condition of the Appellant. In the applications the periods were changed from calendar year 1993 to the fiscal year 1994-1995. This change was an attempt, in good faith, by the Appellant to more closely adhere to the questions on the application, 'from each during the past twelve months'. The revised representation is to more clearly demonstrate the role of his substantial expenses and explain the financial condition of the Appellant and his financial ability to retain counsel.

8. In addition, at the time of the filing of an application for Forma Pauperis, Appellant had sufficient reason to consider that he would have a substantially reduced income in 1995 and did in fact. (see exhibit 2 and 8)

9. In addition, as indicated earlier, Appellant has substantial tax obligations that he must pay that are materially significant to Appellant's financial condition and relevant to Appellant's ability to retain counsel. (see exhibits 5 and 6)

10. No 'elaborate scheme' ever existed. Appellant, while not being an attorney, has continued to provide the Court with any information requested. Appellant is also

confronted with continuously learning the rules and procedures as he continues, PRO SE. Any changes that have occurred were attempts to respond more completely to the Court.

11. No ' continued deception' exists or existed. (see 6, 7, 8, 9, 10 above)

12. Appellant also understood that when counsel was appointed his financial status would be reasonably analyzed, and to the extent reasonably feasible in light of changes in his financial condition he would be required to pay the legal expenses. (FRCP 3.86(A)) But, Appellant understood that counsel would continue in such a complex case (Rule 3.82) as the Court had already affirmed.

13. Appellant was awaiting formal appointment of counsel to properly review his financial condition and its relevance to both the Rules and the Court. While the Court has appointed counsel, all of the attorneys have had a potential conflict of interest, save one, and at no time during these proceedings did an attorney file an appearance on behalf of the Appellant. Appellant never had counsel formally representing him who had properly filed an appearance.

14. Based on Attorney Eugene Friedman's Motion of November 7th, 1996 (exhibit 7) the Court affirmed and indicated it wanted a 'multidisciplinary' approach to this complex case and the many issues. Appellant's impression has been that this applies also under his original motion

regarding the five issues his Rule 3.82 which also moved for appointment of counsel due to complexity.

15. Based on the Court's own experiences in appointing counsel for Appellant, the Court now has evidence of the validity of Appellant's own difficulties in retaining counsel. All appointments by the Court, save one, have had a conflict of interest, primarily with defendant Baxter International or it's associates. Appellant's impression has been that this applies also under his original motion regarding the five issues within Rule 3.82 and the 'inability to retain counsel' in that motion which was granted by the Court.

16. Appellant while having in production a much more specific Amended Complaint (see exhibit 10), with new evidence to provide merit to his allegations, has been prohibited from submitting a finished Amended Complaint by the Motion to Dismiss. Appellant has acquired new evidence from the 'meeting with individuals having independent knowledge in these matters' which is mentioned on page 2 of Mr. Friedman's November 7th Motion. (see exhibit 7) Also, Appellant has been provided additional evidence from a Defendant in 94 C 313 before the Court, where Appellant's patents are being tested. Defendants in that case have indicated to Appellant that they have not conceded that Appellant's patents (see exhibits 10 ; (K, L, M, N, and O)) belong to any other than to Appellant.

17. The Order to Dismiss has precluded any defendant from responding to all of the Appellant's allegations. At no time has any Defendant been required by

the Court to provide thorough and complete responses to all of the Appellant's allegations even though the Court has identified many serious allegations in it's Order dated March 19, 1996 that were expanded to even more issues in the Motion filed by attorney Eugene Friedman. (see exhibit 7) Defendants have never been required to respond to all of those issues. In addition, since Appellant has not brought before the Court his new evidence, defendants have not been required to respond to this as well. Also, Appellant has been very recently informed of 'payoffs' in the millions of dollars to some of defendants in this case for his technology. (see exhibit 8) Defendants involved have not been yet required to account for these. (see exhibit 10 (V)) Thus the record in this case is woefully incomplete.

18. Appellant, while not an attorney or an accountant, has attempted, to the best of his abilities, and in good faith, to comply with all Rules and Procedures. A detailed review of this case, and the exhibits attached, discloses serious crimes with the intent to violate many Federal Laws (see exhibit 7) perpetrated by Defendants upon Appellant and others and far exceed any minor misunderstanding, if any, the Appellant might have had of the Rules or Procedures. These serious matters, in Appellant's opinion, must take precedence if 'substantial' justice is to be done. (FRCP Rule 61).

After presentation of the above issues and this motion by the Appellant in the District Court the Court denied this motion for reconsideration of the order to dismissal. (see 4/9/97 - MINUTE ORDER - Docket #249 4/22/97) The argument by the Court concerns 'living expenses', or another

minor accounting issue, or term, not specifically asked for on the Forma Pauperis form. Also, the Court did not comment on the attached Memorandum's contents and their relevance to the enormous serious central issues within Appellant's case even though the Court was informed of the additional and new evidence within this Memorandum. (see 4/4/97 - MEMORANDUM - Docket #244-246 4/22/97) That new evidence concerns payoffs in the millions of dollars, and testament by others, other than Appellant, seriously damaged by the defendants in this case.

The case cited by the District Court is a very inappropriate comparison to Appellant's case. (*Romesburg v. Trickey*, 908 F2d 258, 259 (8th Cir 1990)) In this case a prisoner was concerned about his health and did not list a material real estate asset on the Forma Pauperis form, committing fraud. In Appellant's case he simply listed his after tax income accurately on the form, there was no fraud. In Appellant's case this number came from a practicing Certified Public Account, not a 'prison lawyer'. In Appellant's case much more serious legal issues abound; it is the case of a nationally recognized inventor involved in an attempt to return, compete, and save additional human lives on a national scale using his well established expertise. Somewhat ironically, it appears the prisoner's assets may actually exceed those assets of the inventor after the terrible numerous illegal acts perpetrated against him?

In the Romesburg case it was also stated that, "dismissal with prejudice is a drastic sanction which should be used sparingly. (*Brown v. Frey*, 806 F2d 801, 803 (8th Cir 1986))" The dismissal of Appellant's case with prejudice,

and citing the Romesburg case, is especially inappropriate in light of the fact, already extensively disclosed, that Appellant is also attempting to complete his patented life-saving designs and affect the savings of thousands of additional human lives on a national scale, as he has already done. Certainly the Courts do not intend and should not exercise dismissal with prejudice when such an important issue is involved. Should this not be a national concern, in the interest of the United States, and not just a concern of just Appellant?

Materiality: Appellant has been advised that in order to retain counsel for such a complex case he would have to have hundreds of thousands of dollars and use many attorneys to address all the above Issues mentioned and identified by both the Court, counsel appointed by the Court, and himself. In order for the alleged error, if any, by Appellant on his Forma Pauperis form to have any material relevance to the case, the numbers at issue would have to be of substantial magnitude to affect Appellant's abilities to retain counsel. The amounts disputed by the District Court are not of the amounts to be even qualify as a major issue in the case, nor even provide motivation for fraud. The Appellant cannot even retain one attorney for prosecuting this case much less three, as the District Court has attempted to appoint. If the Appellant has to have funds to retain three attorneys, the issue becomes substantially more irrelevant. In light of this complexity (Rule 3.82), as already affirmed by the Court in it's attempt to appoint three attorneys to Appellant, the issue of the relatively small amount of funds available to Appellant have no significance when the

predominate issue is complexity that must be addressed. (F.R.C.P. Rule 61)

Regarding materiality, and the appointment of counsel, this issue becomes even more irrelevant in light of this case's legal issues and the issues of processes of the saving human lives. Appellant is under the impression that such cases with such issues usually are candidates for intervention. (see *Crosby Steam Gauge & Valve Co. v. Manning, Maxwell, & Moore, Inc.* (DC Mass) 51 F Supp 972, 59 USPQ 189) Perhaps the Court should immediately recommend intervention in this case because of the overwhelming importance of these facts. The material importance as to whether the Appellant made an error, if any, on his Forma Pauperis form is insignificant in the context of properly addressing such issues.

Finally, what 'harmful' error or even error of magnitude could have occurred, if Appellant never formally had counsel? To Appellant's knowledge, no attorney ever filed an appearance on behalf of Appellant. Appellant was never formally represented at all. Any such error, if any, on his application for counsel would necessarily have to be a 'harmless error', especially in the context of the serious legal allegations still remaining so unaddressed in this case. (F.R.C.P. Rule 61)

CONCLUSION:

Appellant is not an attorney, nor an accountant, and has, to the best of his abilities and in good faith, attempted to comply with the rules of the Court. It is inevitable that

Appellant will make errors because of his unfamiliarity with the rules and procedures and Appellant is in the process of learning these rules as he struggles through the steps of expediting his case alone. To date the focus of the defendants and the court has been on minor clerical errors Appellant may have made, as a result of his Pro Se status and inexperience, instead of the central serious legal questions in the allegations identified. Defendants have focused primarily on rule 12(b) errors with a view to taking advantage of Appellant's inexperience and have, for the most part, not even responded to ANY of the Appellant's very serious allegations at all. The Court has identified most of these issues, their complexity, and must address these questions and disregard any minor errors Appellant might have made. (F.R.C.P. Rule 61)

In March, 1996, the District Court ordered Appellant to produce an amended complaint. Because of the primary focus of the Court on a minor, materially insignificant, error, if any, by Appellant, Appellant has not been given normal fair opportunity to file an amended compliant as is normally the practice and due process in the District Court.

Relief sought by Appellant from the United States Court of Appeals for the Seventh Circuit:

1. Order to Dismissal dated March 18, 1997 (see Appendix) should be amended to show the true and accurate record of the incamera meeting (3/18/97 Memorandum and Order - Docket #239 4/22/97) with the Appellant and proper sequence of decisions by the District Court. Attorney

Mr.Miller's dismissal was not relieved as counsel to Appellant or a result of , 'plaintiff was not entitled to appointed counsel', but instead Mr. Miller was already dismissed because of a conflict of interest accepted, previously, by the Court in the same proceding.

2. Also, the order, in Appellant's opinion, should be amended to properly disclose, that in the same proceeding, the Court's opinion was that Appellant had NOT committed fraud in these matters at all. This is particularly appropriate, in Appellant's opinion, because there was no change in the facts before the Court at that time and the time of the order to dismissal was eventually rendered. In addition, the Court had conferred privately with it's counsel before stating such. At the least this properly discloses just how 'minor' and 'harmless' any error, if any, the Appellant might have made in fact is. No elaborate scheme or fraud ever existed, and magnitude of any such error, if any, is materially insignificant, especially in light of the serious central legal questions posed in Appellant's allegations. the above context is also important to Appellant, as Mr. Miller, as it appears, may have prejudiced Appellant's case in this proceeding.

3. The Record should be made to show Appellant did not commit fraud. Appellant has simply disclosed his after tax income accurately on the form for Forma Pauperis. Appellant relied on the District Court to determine if this qualified him for appointment of counsel, and the Court did. Appellant should not be penalized for accurately disclosing a conventional accounting term and amount on his form.

4. The Record should be made to show no elaborate scheme existed to defraud the Court. All financial records have always been available to the Court. The Court, to date, has not performed any thorough reasonable review of all of Appellant's financial records at all. Financial disclosures by Appellant in these matters do correlate with financial condition and respective available records of Appellant.

5. Appellant's appointment of counsel should continue. Before counsel may be removed Appellant is entitled to a full and reasonable review of all of his financial records and to the extent feasible, in light of changes in his financial condition, he would be required to pay legal expenses. (F.R.C.P. Rule 3.86(A)) Also, the District Court has affirmed that this case is complex, as put forth via Rule 3.82 and Appellant's original motion for counsel. Counsel should be appointed as the Court has already affirmed complexity.

6. Appellant's case should be reinstated and continued because the Record is incomplete. Appellant's case should be reinstated for due process for the record is woefully incomplete. For example, Baxter and it's immediate defendants have never been required to respond to even ONE of the serious allegations the District Court has identified within Appellant's first Complaint or allegations identified in the subsequent Memorandum filed by Appellant on 4/4/97. (see 3/31/95 - Reply Memorandum by defendants Loucks, Baxter, etc. Docket #73 4/22/97) No oral arguments, no amended complaint, and no such normal due process has been rightfully extended to Appellant.

7. Appellant's case should be reinstated and continued. The error by Appellant, if any, for which the case was dismissed does not affect the very serious subject matters, or principle issues, within the Appellant's case. The Court cannot disregard these issues in the case because of a harmless error, if any, the Appellant may have made because this is inconsistent with substantial justice. (F.R.C.P. Rule 61) "Harmless error is not ground for setting aside or disturbing verdict or judgment; appellate courts sit to do substantial justice..." (*Morgan v. Sun Oil Co.* (1940 CA5 Ala) 109 F2d 178)

8. Question of Venue: In retrospect, Appellant, and most of his friends and relatives, have expressed great concern that Appellant may not be able to have a fair hearing of his case in Illinois. For almost a year, the District Court attempted unsuccessfully to appoint counsel that would formally represent Appellant. This was almost exclusively because defendant Baxter has retained virtually every major law firm in the region. Prior to this, Appellant, and perhaps the Court, did not know that defendant Baxter had such a 'stranglehold' and exerted such extensive influence on the legal community here. For almost a year Appellant awaited upon the Court appointment of counsel and upon advise of how to proceed while he has had some recovery financially. This unfair delay may have resulted in the misunderstanding of Appellant's financial condition. Finally, when counsel was appointed, in the form of Mr. Miller, it was counsel who had a very serious conflict of interest and who may, as it appears, unfairly prejudiced Appellant's case.

Also, Appellant has attached, herewith, his Certificate of Interest. However, Appellant would also like to note, relative to this, that his filing of 4/4/97 also states the possible involvement in these matters of the former U.S. Attorney, Mr. Anton Valukas. Presumably, and respectfully, many in the Court might have worked with Mr. Valukas before and might not be able to view or judge Appellant's case without prejudice.

Because of the above events and matters Appellant respectfully requests the Court to consider whether this is an issue and to whether this case, and perhaps this appeal, should be heard outside the State of Illinois. Certainly, if counsel is appointed, this perhaps, should also be from outside the state.

The Court is faced with a choice to focus upon the central legal issues in this case of considerable import or other much less serious issues.

In the past, the defendants in this case have attempted to take advantage of the Appellant, his Pro Se status and inexperience while not being an attorney, an accountant, or his unfamiliarity with the Court's rules or procedures, by focusing this case on insignificant clerical errors and other matters not having any relevance what-so-ever to the serious legal issues central to Appellant's case. these issues have been identified by the District Court, an attorney appointed by the Court, and Appellant. Appellant respectfully begs the Court to consider those matters of utmost importance so that substantial justice may be done.

Respectfully submitted:

Roger Lee Heath
PRO SE

Roger Lee Heath (Appellant)
Appearing PRO SE
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APPENDIX

1. Copy of District Court Order Appealed
2. Certificate and Affidavit of Service